

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 408 OF 2006

1. Sou.Chandrabhaga Dhakalu Kadam
& Ors. .. Petitioners.

V/s.

1. Paschim Vibhag Shikshan Mandal
Bijgarni & others .. Respondents.

Mrs.Varsha Palav for the Petitioners.

Mr.S.S.Pakale for the Respondent No.2.

Ms. Mulekar, AGP for Respondents Nos.3 to 6.

CORAM : S. A. BOBDE, J.

DATED : 10TH SEPTEMBER, 2007.

P.C. :-

. By this contempt petition, the petitioners allege disobedience of the order dated 3rd September, 2003 passed by the learned Civil Judge, Sr.Division, Gadhinglaj in Regular Civil Suit No.28 of 1998. That part of the order which according to the petitioners has been breached reads as under :

"3. I hereby issue perpetual injunction restraining Defendant No.1 from transferring management of Brahmling Vidyalaya Hajgoli, Tal.

Chandgad, Dist. Kolhapur to Defendant No.2 or any other institute without following legal recourse.

4. I hereby issue perpetual injunction restraining Defendant No.2 from taking the possession of the management of Brahaling Vidhyalaya from Defendant No.1 without taking due recourse with the legal procedure."

2. The contention on behalf of the learned counsel for the petitioners is that the respondents have effected transfers without legal recourse as ordered by the trial court. Shri Pakale, the learned counsel for the respondents-transfree and Ms. Mulekar, the learned AGP, who appeared for the Dy. Director of Education, both submitted that the legal recourse which the management must resort to for transfer, whenever there is a change in the management, is provided by paragraph 12.1 of the Secondary School Code, requires a previous approval of the Dy. Director. In particular, the learned AGP for the Dy. Director of Education submits that the said approval has been sought by the respondent No.2.

3. It is further contended by the learned counsel for the petitioners that there is a defect in the approval and that the order of change of the management made by the Charity Commissioner has not been followed while granting the permission. This contention of the learned counsel for the petitioners interalia means if there is any defect in following the procedure or in granting the approval, the respondents have effected the transfer without legal recourse. Such a contention is not acceptable. It cannot be said that legal recourse is not taken because there is some defect in the proceedings or the resulting order. In fact, it is clearly accepted by Ms. Varsha Palav, the learned counsel for the petitioners that the writ petition, challenging the legality of the order of the transfer is pending before this court. In the circumstances, it cannot be said that there is wilful disobedience of the order of the court in question. Hence, the notice is hereby discharged.

4. In the result the petition is dismissed.

(S.A.BOBDE, J.)

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